

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JULIO DE LA PEÑA, DEFENDANT AND APPELLANT.

G.R. No. 32825. August 06, 1930

Ponente: STREET, J.

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STREET, J.:

Julio de la Peña and Agapito Rafael engaged in a fight armed with weapons, as a result of which the latter was killed. The former was accused and convicted of homicide and sentenced to fourteen years, eight months, and one day reclusion temporal, to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs.

From this judgment, the present appeal was taken, in support of which the following alleged errors are assigned: (1) In granting the prosecution a continuance over the defendant's objection; (2) in giving credit to the testimony of Crisanto Francisco, the only eyewitness, in spite of the fact that the trial court found that he was not telling the truth; (3) in not holding that the defendant acted in self-defense; (4) in admitting the declaration in Exhibit B together with the testimony of Antonio Rafael and Carlos Candido as *res gestae*; and (5) in not acquitting the defendant.

As to the granting of the continuance in the first instance prayed for by the prosecuting attorney, the record contains nothing which might point to an abuse of discretion on the part of the trial court. The following is the fiscal's petition for a continuance, which was granted by the court:

"We telephoned the municipal president of Polo, Bulacan, to bring with him the barrio lieutenant, Carlos Candido, in order to testify in this case at about 3 o'clock this afternoon; and said president answered that they would come; but for some reason or other they did not arrive until 4.30 this afternoon. Therefore, we pray the court to postpone the hearing until tomorrow, the 4th inst." (Pages 24-25, s. n.)

Applications for continuances are left to the discretion of the court, and unless an abuse is shown, this court will not reverse the action of the trial court thereon.

An examination of Crisanto Francisco's testimony of record does not in the least detract from its credibility. But the trial court, in its decision states that full credence cannot be given to said witness. The learned judge must have arrived at this conclusion from a consideration of the witness's attitude and manner of testifying, which advantage this court lacks. The trial judge, however, did not entirely reject said testimony, but merely believed it was somewhat exaggerated.

This court deems said testimony worthy of belief where it states that the defendant pursued the deceased and that when the latter fell on his face, the defendant slashed him. This portion of the testimony is corroborated by other details of the case, and especially as to the location of the two principal wounds upon the victim's body, one of them in the back of the neck, and the other in the left scapular region (Exhibit A). This circumstance does not of necessity make the crime murder, since the pursuit and attack by the defendant did not constitute treachery, but were a mere incident of the fight which was going on.

There is not sufficient merit in the second assignment of error.

Counsel for the appellant contends that the accused acted in self-defense. The evidence shows that the defendant stated the truth in declaring that the deceased started the fight. Considering the circumstances of the case, it was the deceased rather than the accused, who had a motive for doing so, inasmuch as the latter, against whom the defendant had filed a complaint before the proper authorities, believed his rights were being infringed upon when he saw the appellant cutting grass and herbs on the land claimed by both, and which the deceased claimed belonged to himself.

There was not, in this court's opinion, sufficient provocation on the defendant's part, and thus there were present two of the elements of self-defense, to wit: An unlawful attack, and lack of provocation on the part of the accused.

But there was no reasonable necessity to take the deceased's life. It has been sufficiently proved that when the latter received the two mortal wounds, the bolo with which he had attacked the defendant had already fallen to the ground:

We have reached these conclusions by an examination of the record, even without considering Exhibit B and the testimony given by Antonio Rafael and Carlos Candido relative to said document. For this reason, even if the fourth assignment of error were proved it would not affect the result of this case.

This, then, is a case of incomplete self-defense, provided for in article 86 of the Penal Code, under which the penalty must be lowered two degrees, and prision correctional in its maximum degree shall be imposed.

Wherefore, the judgment appealed from is modified, and the appellant hereby sentenced to six years prision correctional, with the costs and the accessory penalties provided in article 61 of the Penal Code; in all other respects, said judgment is affirmed. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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